UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:		
NILES S LIPIN	CH: 11	2:11-BK-26500-GBN
1) ORAL ARGUMENT ON DEBTOR'S CROSS MOTIONS FOR SUMMARY JUDGMENT (CLAIM #12)		
2) CONTINUED CHAPTER 11 STATUS HEARING		
3) ADM: 2:11-bk-26500-GBN ORAL ARGUMENT ON DEBTOR'S PARTIAL MOTION FOR SUMMARY JUDGMENT AGAINST WALKERS (CLAIM #13)		
4) ADM: 2:11-bk-26500-GBN ORAL ARGUMENT ON DEBTOR'S OBJECTIONS TO CLAIM #12 AND CLAIM #13		
5) THE PARSONS COMPANY, INC. & THE ESTATE OF ROBERT WALKER AND EVE WALK vs NILES S LIPIN & MARIE PIERRON & AWD FARMS, LLC STATUS HEARING ON COMPLAINT RE: SUBORDINATION OF CLAIM OR INTEREST		ADV: 2-11-02300

U.S. Bankruptcy Court
230 N. First Avenue, Suite 101
Phoenix, AZ 85003-1706

January 18, 2013
10:30 a.m.

BEFORE THE HONORABLE GEORGE B. NIELSEN JR., Judge

APPEARANCES:

For the Debtor: Richard L. Strohm
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Phoenix, AZ 85003

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APPEARANCES: (Continued)

For the Walkers:	Kevin R. Keating THE KEATING LAW FIRM, PLC 7702 East Doubletree Ranch Road #300 Scottsdale, AZ 85258
For The Parsons Co., Inc.:	Paul A. Loucks MESCH CLARK & ROTHSCHILD PC 259 North Meyer Avenue Tucson, AZ 85701
For AWD Farms, LLC:	David W. Reichel 2700 West Baseline Road Suite 133/166 Tempe, AZ 85283

Proceedings recorded by electronic sound technician, Kayla Colasont; transcript produced by AVTranz.

THE CLERK: All rise.

THE COURT: Be seated.

THE CLERK: In the case 11-26500, Niles Lipin.

THE COURT: I'll take appearances in all of the Lipin matters.

MR. STROHM: Your Honor, Richard Strohm on behalf of the Debtor, Mr. Lipin, who is present.

MR. KEATING: Kevin Keating for the Walker creditors.

MR. LOUCKS: Good morning, Your Honor. Paul Loucks on behalf of the Parsons Company, creditor.

THE COURT: All right. Counsel, why don't we take up the summary judgment matters first. That would be calendar items 11 and 13, and I think actually we would probably also discuss calendar item 14, the Debtors' objections to these same claims as well.

The -- I'll note in calendar item 11, actually this would be oral argument on cross motions for summary judgment, because the creditor Parsons there filed a cross motion.

I'll listen with interest to counsel's presentations but as I usually do, I'll share with you what my current view of the matters are on a -- as a preliminary basis.

Quite frankly, it's just not clear to me that it's appropriate to grant partial motions for summary judgment to the Debtor-in-Possession based on the pleadings that have been submitted so far. It's not clear to me at all. The -- I

recognize there's a suspicion here that there are other sources of recovery that may have occurred or might occur in the future, but I don't think that suspicion currently is a sufficient basis for a ruling of partial summary judgment. As things now stand, I'm inclined to deny the Debtors' motions. In thinking about granting the Parsons cross motion for summary judgment because based on the current record here, I do not see an appropriate reason to sustain an objection to, actually to either of the creditors' claims here, so I don't currently see things the way the Debtor sees things. So that strikes me that we'd better hear from the Movant at this time.

Counsel?

MR. STROHM: Thank you, Your Honor. May I approach? I have some slides I'd like to present to the Court.

THE COURT: All right. Well, okay. Do you have copies you provided to your colleagues?

MR. STROHM: Yes, sir, actually.

THE COURT: All right. Okay.

We've got slides here, and the slides are going to show me the basis for sustaining an objection to the respective creditors' claims. Is that correct?

MR. STROHM: Yes, Your Honor. We had prepared today an oral presentation based on what the Court's calendar indicated from your judicial assistant, and you can see on the first slide what we were talking about was oral argument today

on the partial summary judgment motion with respect to claims 12 and 13, but also a status conference that was set according to your JA as to 26500. Mr. Barskey, by the way, is standing by for that.

And then we also had from your JA on the agenda oral argument on objections to claims 12 and 13. However, the Court has already ruled on those as of December 18th.

THE COURT: Indeed.

MR. STROHM: And then also the status conference for the AP-11-2300. Mr. Reichel is here for that.

We did not have any indication from the Court of scheduling the argument on the cross motion for summary judgment today that Mr. Loucks had filed on behalf of Parsons. So that was not on the agenda, and --

THE COURT: The cross motion, however, was fully briefed, was it not?

MR. STROHM: Yes, sir.

THE COURT: All right. Well, if that being the case, I frankly assumed that we were going to go forward today on that cross motion.

But let's hear the argument first of all in support of Mr. Lipin's summary judgment motions.

MR. STROHM: Before I being, Your Honor, I would like to first want to know if the Court would be interested in doing the brief status hearing on 26500? I believe Mr. Barskey is on

the phone, standing by.

THE COURT: All right. If we can resolve some other matters first, actually -- actually I think -- well, why don't we do this. Let's call -- let's conduct the status hearing in adversary proceeding 11-2300; that's an action by Parsons and Walker together, to creditor seeking disallowance of fraudulent conveyance actions against the entity AWD Farms, and we'll take any additional appearances.

MR. REICHEL: David Reichel on behalf of AWD Farms.

THE COURT: All right. Gentlemen, on that adversary proceeding, what's the -- what's the status of the litigation? How should it be managed?

MR. KEATING: At this point we have a stipulation almost finalized as to Parsons' dismissal from the case. So we -- that should be done within the next day or so, and that is pretty much where we're standing with it at this point.

THE COURT: Yes?

MR. REICHEL: Your Honor, if I may, as the one of the two Plaintiffs in that matter, the -- of course, the Walkers are not going to be stipulating out of that case at all, and there is -- the status of the case from the Walkers' standpoint is that the -- there was outstanding discovery that's been out there for a long time. Before that discovery was complied with, AWD Farms filed a motion for summary judgment. We then sort of re-upped our demands for the completion of that

discovery, and put off any briefing on the motion for summary judgment.

There'd been -- there had been some discussion about depositions being set, but then some people were not available for a while, and so it's sort -- we're in the middle of that discussion about going on, going forward with discovery. And so that's where we're at, you know, waiting for answers to discovery and waiting to set up some depositions, you know, as pertain to Walkers and AWD Farms and the other defendants in that matter.

THE COURT: All right. Now, there's some arrangements apparently where they'll be a stipulation that Plaintiffs Parsons Company will no longer serve as a Plaintiff here, Mr. Loucks?

MR. LOUCKS: Correct, Judge, and forgive me for speaking from the table instead of from the podium, but I have been in contact with AWD Farms, with both Debtors, and of course with Mr. Keating, and over about the last ten days or so, and I believe we have a stipulation finaled (sic). I circulated just before this hearing a request that I be able to sign for everyone and get that on file hopefully later this afternoon.

THE COURT: Okay. And Mr. Keating, will there be any objections from your client to this realignment?

MR. KEATING: No, Your Honor.

THE COURT: All right. Well, that indicates to me, gentlemen, that the withdrawal of the one Plaintiff can be handled by stipulation. As soon as that stipulated order reaches me, I'll gladly sign it.

We do have pending discovery Mr. Keating points out on behalf of Walkers. So sounds like the parties need to proceed with their discovery here, and I'd be inclined to leave parties alone for say 60 days and just simply bring you back for a status hearing. Will that work in this case --

MR. REICHEL: Yes, Your Honor.

THE COURT: -- or do we need to make other arrangements?

MR. REICHEL: That'd be fine, Your Honor.

MR. KEATING: Sixty days sounds good to me, Your Honor.

THE COURT: All right. Let's do this. I suspect -- well, no, I'm not going to suspect anything. So could we just set calendar item 15, that adversary proceeding, could we set that on one of our adversary calendar status hearing calls in roughly 60 days, please?

THE CLERK: April 2nd at 9:30.

THE COURT: April 2nd at 9:30, I'll take a report. Yes?

MR. REICHEL: And perhaps the Court could note that, you know, the outstanding motion for summary judgment with the

briefing on that would be pending the completion of discovery.

THE COURT: All right. There's a pending motion for summary judgment, and that's going to be continued pending the completion of discovery. Is -- Mr. Keating, is that right?

MR. KEATING: Your Honor, I'm not sure that I would agree with that position. I think that the motion can be addressed prior to what has turned out to be quite a lengthy discovery process. And I would ask the Court that if we're going to have a status conference on the 2nd, that we would get a -- that date for at the very least to have had completed the answering to the summary judgment motion.

THE COURT: Well, what -- the response to the summary judgment, Mr. Keating, that requires the completion of discovery. I take it I need to be reminded here there was a Rule 56(f) request, is that's what's happening?

MR. KEATING: Yes. Yes, Your Honor. I mean, there are -- it's going to be a heavily fact driven motion.

THE COURT: Okay.

MR. KEATING: And although I suppose it doesn't have to wait until the total completion of discovery, we haven't even -- he hadn't even started complying with any of our discovery requests.

THE COURT: All right.

MR. KEATING: It's not like we've been in the process of discovery for a long time, we've been in the process for a

long time of propounding discovery, but there hadn't been any responses as yet. And no dates have been provided for the depositions either.

THE COURT: Okay.

MR. KEATING: So --

THE COURT: All right. Well, it sounds like the speaking request to complete the briefing, I can't -- I can't deal with that right now. There's going to be an objection that there's Rule 56(f) implications here. So we'll leave that alone. I'll hear -- it'd be good to hear on April 2nd, it'd be good to hear that counsel have resolved this matter, and when and if they do, if they want to stipulate to a briefing schedule on that pending motion in adversary 11-2300, I'll -- I'm sure I'll approve the stipulation. But other than that, I'm leaving the parties alone.

Anything further in addressing this adversary?

MR. REICHEL: If I could just bring to the Court's attention, there has been significant discussions between myself and Mr. Loucks regarding settling the case.

THE COURT: Excellent.

MR. REICHEL: And that hasn't went anywhere at this point.

THE COURT: Okay. Now, that's not so excellent. Okay. Well, but it -- I do appreciate counsel's attempts, and it's never too late. Sometimes right in the midst of

litigation, the -- either the clients see the light, or they get too many attorneys' bills and then -- were able to settle matters. So we'll keep that hope alive, and I know counsel will be alert to that.

All right.

MR. REICHEL: Thank you.

THE COURT: Good day.

I believe now we can direct our attention to the pending summary judgment matters filed in the administrative cases. Counsel?

MR. STROHM: Your Honor, I thought that Mr. Barskey was available on that --

MR. BARSKEY: Your Honor, I just -- this is Chris Barskey. I just clipped in by the phone about six minutes in, so I apologize. But I just want to notice my appearance. If the Court has any questions on the procedure the admin case, I'd be happy to answer them, but if not, I was going to pass the discussion to counsel who's briefed the issue.

THE COURT: All right. Why don't we -- let me look quick at my notes on the Chapter 11 matter. And as I think I recall, now we're largely -- the -- Mr. Lipin is largely delaying the filing of his plan and disclosure statement because of these summary, important summary judgment pleadings regarding these important creditors here. I don't, unless there's administrative matters to be brought up, frankly, what

I would -- what I would suggest we do is simply continue the Chapter 11 status hearing to -- for the convenience of counsel, we could continue that to April 2nd at 9:30.

Will that work for everyone?

MR. BARSKEY: That works for me, Your Honor.

THE COURT: Okay. That's what we'll do. We've got to resolve this -- these contested matters first, and I'll take another Chapter 11 report on April 2nd at 9:30.

MR. BARSKEY: Thank you.

THE COURT: Okay.

Now, let's see if we're ready for summary judgment.

MR. STROHM: Thank you, Your Honor. But before I begin, when we were before the Court last November, the Court asked a question of me that I had a tentative answer for, and now I've gone back and reviewed the documents and records and have a firm answer for. The Court had asked me whether the Walkers' fraud claim against Mr. Lipin was ever brought up before any court, including the Pinal County Superior Court in the post-trial motions in Pinal County, or in Division 2 of the appellate court with respect to the 60(c) motion, or in the Rico action. And I've gone back and reviewed all of the pleadings, all of the minute orders, and I have found that there has been no determination on the merits of that statute of limitations subject matter jurisdiction issue. I apologize for the Court for not having that at my fingertips last time we

met, but it is a very lengthy record involving lots of cases.

THE COURT: Is that a claim, this fraud claim, is that a claim that could have been brought in Pinal County but was not for whatever reason?

MR. STROHM: It could have been brought, but it's jurisdictional, Your Honor, and never waived.

THE COURT: Okay. Understand.

MR. STROHM: All right. I know the Court has reached tentative conclusions, and I have an uphill battle, and what I'd like to do is to begin by making some remarks that I think are common to both the Parsons claim and to the Walkers claim.

Our position is that with respect to offsets, in order for the Court to do its job and for the estate to have full value, we need to understand exactly what has been paid to them as setoffs, and that is a mystery. Our position is, and under the case law I think it's supported, that anything that's received, and we're talking about cash or anything that can be monetized that was allegedly suffered as a result of any of the damages claimed by these creditors because of the easement dispute, that amounts to a setoff, a setoff against any sums that either Walkers or Parsons are now seeking against Lipin and Ranch. And I think with respect to Parsons first, the record is absolutely clear, and this is the basis for our summary judgment because there is no disputed fact over this issue. Rule 56 seems to suggest that we're entitled to this.

Parsons only had one easement. And he can recover his damages, his damages on this easement only once, and that includes attorney's fees. We have one easement, one set of litigation that spawned a number of satellite theories back and forth against the others, but all of it came about by virtue of this 1998 cattle agreement which in essence was a license given by Walkers to Parsons to run an entire cattle operation. And I think what we lose sight of in this case when we're talking about easement is we're thinking of this as simply a case where there is an easement that was filed with the recorder -- it wasn't filed with the recorder's office that later served as to net became a problem with the litigation. It's a little deeper than that.

The actual agreement between Walkers and Parsons is a 19-page agreement, two provisions of which are significant. First one is that in 1998 Walkers and Parsons agreed that cattle could be run all over the entire 1,100 acres. There was no easement dedicated just to cattle grazing. So, Judge, this is not a situation where you have a couple of cows going down a path, nose to tail, to the water. This is a situation where the entire 1,100 acres was subject to the Parsons cattle ranch. That was by agreement between Walkers and Parsons. The reason why that's significant is that it wasn't just merely a discussion about easement, it was a discussion about whether there could be a use that would be nonconforming that would

interfere with the cattle operation.

And so our position is at the outset if you have one litigation, you have one set of facts which involves a single easement or a single cattle operation, then they can only recover one set of damages for all of the things that they've experienced they're claiming against Lipin and Ranch as the problem.

So what we've done in our moving papers, Your Honor, is we've tried to outline to you some of the things that we believe are proper setoffs. Parsons simply cannot collect the same damages twice. And until the Court allows us some discovery on this, and until the Court allows us a specific -- until the Court requires them to provide the specific details of the setoff, we're flying blind. We don't know exactly what was received and whether they have received full compensation or partial compensation. And as we'll show here in a minute, we may end up in a position where the entire claims, both Parsons and Walkers, are extinguished because of the recoveries that they've received from Fidelity, or from Mesch Clark, the law firm, or between themselves.

THE COURT: Now, have I refused to allow the Debtor to conduct this discovery?

MR. STROHM: No, sir, and I don't mean to imply that you have. We have not --

THE COURT: Okay. Well, I wondered about that

phraseology "until the Court allows this" because we're merely -- the parties, as you know, when parties need discovery, they just do it. Has that been accomplished here?

MR. STROHM: We have not, Your Honor, and we've not done it for two reasons; one is that both Mr. Loucks and Mr. Keating have indicated in papers filed with the Court that they will not disclose these settlements, that they're irrelevant from their point of view. Mr. Keating claims that they're a violation of Rule 408, which is nonsense, but they won't voluntarily disclose them. We've asked for discovery from them informally. We have not followed it up formally. What we would like to do, of course, with the Court, because the Court is continuing -- if the Court will stick with its original idea of denying our partial summary judgment motion today, then we will follow up because that issue of offsets is still in the case. It just means that the summary judgment hasn't been granted.

THE COURT: Well, it seems to me with respect, counsel, that if the discovery, if the formal discovery to establish Mr. Lipin's suspicions about what has happened here, and multiple recoveries, if that discovery hasn't even accomplish -- hasn't even been formally instituted yet, how could it -- how could there possibly be a basis for summary judgment?

MR. STROHM: Well, the basis for summary judgment is

that we have one easement, that we know that there were damages that flowed from the easement, both against Mr. Lipin and Farms and also with respect to the Walkers and Parsons. They have a deal back and forth between each other. We don't know the terms of that deal.

THE COURT: So what we -- so that the -- to the extent there's a setoff, there is -- it is surely not liquidated at this point.

MR. STROHM: At this point, we cannot monetize all of the settlements. We only have information from attorney's slips and from other pleadings that were filed in some of the satellite litigation. But what we can do is we can make a representation to the Court that the setoffs are for damages that arise out of the easement, which is the single litigation that we have in this case, which prevents double dipping or triple dipping. We only have one set of damages that either of these creditors are entitled to, yet we have a number of different moving parts here with respect to compensation for the easement damages that each has allegedly experienced.

So our position is with respect to Rule 56 that we at least have the right to have the Court decide to ask -- decide for us that there is no material issue of fact as to whether there are offsets. The amount of those offsets we're prepared to do discovery on to find out, and if they refuse, we would go back to the Court with a motion to compel. With respect to

Parsons --

THE COURT: The existence of the offset is not a disputed material fact?

MR. STROHM: They admit offsets, but they deny is that the offsets ought to be applied to this Debtor. Our position is that at -- when we look at each of the individual offsets, all of them arise out of a single easement litigation, and therefore must be considered part of the offset for this Court to consider. And the Court is -- or equity. You can fashion any order that you like with respect to this. And we believe that we have sufficient grounds to have the Court find under Rule 56 that there's no disputed issue as to any material fact regarding the existence of offset. The only question is how do we monetize them? And I have some suggestions in a moment.

The point I'm trying to raise with the Court is that both Walkers and Parsons have made an attempt to try to collect the same attorney's fees, deficiency damages, other damages that are related to fraud, other damages that are related to this easement litigation, without giving appropriate credit to Lipin.

Let's go with the first slide, please.

I'd like to look first at the Parsons' number 13 claim and also include my remarks with respect to what I'd be arguing on the cross motion. This is the Parsons judgment, and

I'd like to point out with respect to the Parsons judgment that it finds damages in the amount of 190,800. That's easement damages, and it does not name Mr. Lipin, the Debtor, in this document.

Next, please.

You can see that the total amount that's awarded is 265,475, but the middle paragraph of that exhibit, the very judgment we're talking about that Mr. Loucks wants the Court to take notice of, indicates that the judgment is applied only against AWD Ranch, LLC, Desert Plants Conservancy.

THE COURT: I -- I -- I don't know if this would help or not, and I'll be happy to discuss this further with Mr. Loucks, but my preliminary indication is not to grant the cross motion as to the $190,800 portion of the judgment, because it seems to me that the -- that the predicate for Mr. Lipin's liability for this amount has not been met at this point. Now, the creditor is confident it can establish that, and what appears to be perhaps some type of an equitable argument and perhaps it can, but currently, I'm disinclined to grant cross summary judgment to the creditor on that component of the claim.

MR. STROHM: All right. Thank you, Your Honor. Let's move on then. Next slide, please. Next slide.

This next document is Exhibit A, which Mr. Loucks filed which was an objection to our motion for additional facts

and I'm not here to argue the additional facts motion which the Court has set for March 15thth. However, I am here to point out to the Court -- next page -- that what we're talking about is these parties that we have in this litigation being limited to those that are outlined in red. Mr. Parsons -- Mr. Loucks on behalf of Mr. Parsons has indicated that somehow there is this idea of despite the fact that Mr. Lipin was never named as a party by Parsons, that he is nonetheless in a litigation because there was an answer filed by AWD Ranch and Desert Plants Conservancy and Niles Lipin to the cross claim and third party complaint. So what I've got up on the screen for the Court to take a look at is this is simply the only appearance that Niles Lipin had in this case is with respect to this document right here, Parsons against Ranch, Walkers, Desert Plants, Walkers then third party and Lipin, and that's it. Parsons never went back against Lipin, and none of the judgments in this case that Mr. Loucks has that Parsons is claiming and relate to Lipin at all. So even with respect to the 190, when we shift to the 265, we don't have any identifying -- we don't have any way of identifying Mr. Lipin as the person responsible because he was never sued by Parsons. Just wasn't.

Next.

Mr. Loucks is arguing that Mr. Barton's (sic) signature on behalf of Mr. Lipin in this answer to the third

party complaint is what gives him the right to claim that there is an entitlement Parsons has for a judgment against him. But still they've admitted in their response that there is no service. There's no affidavit of service, there's nothing which would indicate a pleading which would indicate that Parsons was in fact suing Lipin. There certainly was never any litigation with respect to that. That only comes about by virtue of this single document.

So what we're arguing is that if there is no service, it's a violation of due process to allow Mr. Loucks to stand up in Court and say, well, Mr. Barton (sic) answered for Mr. Lipin when that answer is reflective only of a response to a third party complaint filed by the Walkers. It's inappropriate. So we believe the entire 265,000 should be offset and not permitted.

Next.

When this case began, Mr. Loucks filed on behalf of his client what he called a placeholder claim, and the placeholder claim was fairly significant. He originally filed a $456,275 placeholder claim which he later reduced voluntarily. We, again, believe this is the result of an offset that he received from Walkers or Fidelity or some other third party, and that reduced his claim further. And then he also put in this issue of Lipin being responsible for the 190 easement damages, and even though he's not named in the

judgment. So if you -- if we take the way what the Court has already indicated it's going to do, which is to reduce by 190,800, and then take out the 114, we're left with 151,475, and our position is that all of this is dischargeable. All of this should not be subject to any kind of reasonable claim that it was a false claim because it does not run against Lipin.

Next.

We've already indicated to the Court that the parties have admitted settlements, and Mr. Loucks' refusal to disclose the terms of the settlement is stated here in document 181. Our position is that that's not adequate, that that also establishes at the outset an entitlement to us for judgment on the issue of easement damages being subject to the offset.

Go ahead, next. Next.

We don't have any reduction in the offsets other than the 114,000, but we do believe there are others which I'll explain in a minute. There has been no effort to correct the filing of the original claim, which we think is unclean hands. Mr. Loucks has come to Court, he's made a 465,000-some-dollar claim which we now know is incorrect by 114,000. We know that 190,000 of that judgment doesn't apply to this Debtor, and yet now he's still claiming that there is some sort of entitlement that he has by virtue of osmosis because Mr. Lipin happened to be in the case. That's improper. In our view, that's unclean hands and is grounds for the Court to simply reject the claim.

I'm citing the Effort case, which is in our brief. If the Court -- the Court has discretion, but if the Court looks at the documents, I think the Court will be convinced that there was no basis for filing any claim on the part of Parsons in this case. Walkers' a different story.

Next, please.

The Waffle House case and the Hyatt Regency case clearly indicate that the Court's obligation is to make sure that there is no double recovery, and in our position, for our position, the entire amount of the claim would be exactly that, a double recovery, not only because of the offsets, Judge, but because the original 265,000 doesn't even run against Mr. Lipin.

Go ahead.

If the Court does not disallow claim number 12, what's going to happen is that Parsons is going to have a windfall.

Next.

One of the things that I think is lost in both Walkers' and Parsons' objections and their position with respect to our motion for summary judgment is the rule of law that we're dealing with in terms of damages. We're talking about a contribution issue here. There's a single recovery rule, and if they've recovered from third parties obviously we're entitled to offsets for it.

Next. Next.

These are what we think are the settlements that ought to be considered by the Court, and again I think we're entitled to summary judgment on this because all of these flow from the easement litigation that began with this problem that was created by the 1998 deal, cattle deal between Walkers and Parsons. In 2008, there was a release and extinguishment of the 1998 cattle deal that allowed Parsons access to all 1,100 acres. Now, the importance about that, spin this out for you, for the Court, the reason why that's important is that up until that time, if that easement still existed and it would exist forever unless one of the parties changed it and the other party agreed, it would exist forever and it would prevent anything, any kind of use on that property except for what might be considered a cattle operation. Certainly an innocent third party purchaser, like Mr. Lipin and his LLC, couldn't come in and put up buildings and do roads and fence and all of the rest if they're doing it in the middle of a cattle operation. So the significance of that settlement was that the settlement between Walkers and Parsons in '08 ended seven years of contested litigation between those two parties, and it freed up Walkers opportunity now to go out and sell to a third party without being restricted to having to disclose a cattle ranching operation. The third party could buy it for whatever purpose. Secondly, Parsons claimed $47,000 every year to its

cattle ranching operation from the Walkers because of the non-disclosure of the 1998 deal to Lipin, and as a result of that, there was a feeling on the part of Lipin that there was an unfair advantage taken of him because he was not given credit for this. And I think, Your Honor, again, this is an equity issue, and that $47,000 in damages that was taken every year went away. That was extinguished by virtue of this settlement.

Finally, there was satisfaction of a promissory note of approximately 450 -- 1450 a month for 19 months, another $30,000 that flowed to -- that flowed to Parsons. I shouldn't have said finally, there was one other and very important aspect of that 2008 settlement that we haven't discussed. The property is valued at approximately $5,000 an acre, up to $15,000 an acre. We've provided the Court with the comps in the area and also the planning from the County to indicate the value of the property. There was a hundred-acre parcel that was deeded to Parson (sic) from the Walkers as a result of this settlement. If we were to simply do the math on that, that's at least $500,000 in value, up to a million-five in value that Parsons received that would absolutely extinguish this claim just by that alone.

Next.

In addition, there was another settlement between Parsons and Fidelity. This had to do with a clouded title issue in January of 2010, and also another settlement between

Parsons and Rothschild, and we believe that this had to do with attorney's fees. Mr. Rothschild you recall was the author, the drafter of an ambiguous easement which was not properly recorded, and there was a suit by Parsons against that. We don't know the terms of that. We believe it had something to do with forgiveness of attorney's fees, which is the subject of the original judgment.

THE COURT: What would the basis be for declaring an offset assuming this settlement actually occurred, a settlement of attorney's fees, if the attorney's fees dealt with a matter involving the alleged wrongdoing of a third party, Mr. Rothschild?

MR. STROHM: It grew out of the easement litigation that would not have occurred but for Mr. Rothschild's incompetence or his negligence, and if there had not been -- if there had been a correct easement that had been drafted, we never would have been in this position because my client would have discovered it, and he would have known the terms of it and would have been warned off that he was about to buy what was a cattle operation, or land that was subject to a cattle operation that would prevent him from doing the basic thing that he bought the land to do.

THE COURT: That sounds like an argument that Mr. Lipin has a claim against the Rothschild interest as well for, that he has some right to rely on the appropriate creation of

the easement. But to the extent the Parsons have claim against that party, it's difficult to see why a credit should go to the obligations that Mr. Lipin has been declared to owe to these creditors.

MR. STROHM: The idea is whether the creditor has been made whole, and we don't know the extent of what the attorney's fees involved, but when they're coupled with the other settlements, they also imply that there was something that was received of value that we ought to be getting a credit for. The attorney's fees were not spelled out by Judge Olsen. The attorney's fees were simply granted. We don't know what portion of those might have been related to Mr. Lipin's problem with the easement, or his contesting of the problem with the easement.

Finally there is the Walkers' 2012 lawsuit against FATCO and Gust Rosenfeld. Those are also possible setoffs.

Let's go to the next one, please.

Your Honor, I know the Court has -- it's considering denying our motion, but I think it's critical that we look at the Lundell versus Anchor Construction case, because our burden is very minimal in this case. We don't have to do a lot. We came about these offsets in a way that is totally outside the scope of this hearing. The creditors didn't volunteer this information, we found out about it by examining attorney's times slips, and we also found out by talking to other lawyers

who were involved in some of the satellite litigation. We've presented to the Court adequate grounds for believing there are setoffs, and all of these setoffs arise out of the cattle operation/easement issue. The burden shifts then and the creditor is required to prove the validity of the claim and account for all of the offsets.

Next.

So to recap the Parsons offsets, we have a hundred acres deeded to Parson (sic), property comps in the area of 1,100 acres indicate that this might be worth a million-five. The City of Mesa owns land in Pinal County. We've indicated this in our moving papers, 11,000 (sic) acres now are selling between 8,900 and $15,000 per acre, and again, we're looking at a value of simply this one tiny transaction of the benefit that Parsons received as a result of the Walkers-Parsons secret deal to be a million-five and way in excess of what the Parsons claim is now.

Next.

So with respect to Parsons, Your Honor, what we're requesting that the Court do here is to find that claim 12 is entirely offset, because it doesn't run against Lipin. And to disallow as unclean hands the entire claim because it's been submitted as a false claim since it doesn't run against Lipin, and because the creditor has already been made whole, more than whole, and find that the claim is not 456,275, but 151,475 if

the Court is not inclined to dismiss entirely because of the unclean hands, that figure would be subject to offsets. And the offsets would come from the Walker deal and/or the Fidelity and/or the Rothschild deal. But specifically if we look at just the Walker deal which directly relates to this, clearly we're talking about damages of well in excess of 265,000, well in excess of $151,000 if the Court accepts the offset.

And finally we request that the claim be extinguished if the offsets the Court finds exceed the 151,475. Judge, that concludes my remarks with respect to the Parsons. I am prepared to begin the Walkers if the Court would like that, or if the Court would prefer to have Mr. Loucks address the Court?

THE COURT: Let's have you discuss both of your motions, whatever you want to add to those papers. Again, I'll assure all of the counsel I have read the papers here as well, so it's --

MR. STROHM: Thank you, Your Honor. Let's go to the next --

THE COURT: Whatever you choose to emphasize or comment about, fine, but you can rely on the fact that I've absorbed the pleadings.

MR. STROHM: Thank you, Judge.

This is the judgment that Mr. Walker is claiming on the part of his client -- excuse me, Mr. Keating is claiming on the part of his client, the Walkers, and it's basically arising

out of a deficiency judgment. Next. And I've outlined what those dollar values are. The deficiency judgment less the credit bid left a balance of approximately $240,000. Next. Add on to that, the attorney's fees, costs, there were taxes on the property that hadn't been paid in interest, and the total amount of the claim is a million-forty-thousand, and that's accruing interest at about ten percent per annum.

Next.

However, we have found that Mr. Keating has alleged in his complaint against First American Title or FATCO and Gust Rosenfeld, the law firm that was representing my client, that he has made the very same claim for virtually the same amount of money against FATCO and against Gust Rosenfeld as he has against Mr. Lipin.

Next. Next.

In fact what he's alleging -- and this is taken from his response to a motion to dismiss that was filed in this lawsuit -- and I'm quoting directly from it, this is Mr. Keating's words on behalf of Walker in the suit against FATCO and Gust Rosenfeld about the easement litigation. It says, quote,

"In the process of committing violations, FATCO and Gust unreasonably expanded and delayed the proceedings. Gust was counsel of record, usually the sole such counsel for the insured

client and FATCO was paying for the directing of that behavior."

The importance of this is to show that Mr. Keating is now of the belief that the reason why there were so many adversarial proceedings and so many difficult things that occurred in that litigation was not due to Mr. Lipin's activities, but it was due to his lawyer's activities being directed by FATCO.

Next, please.

Mr. Keating then says in his document which we believe is a judicial admission, it was filed with his signature, it says that even at the apparent expense of their own insured client, FATCO and Gust in these actions, and it cannot be emphasized enough, Mr. Keating says, and it is very telling that much of Gust's behavior in the underlying lawsuit was useful only to FATCO and was decidedly unhelpful and damaging to the client AWD-DPC.

Next.

And so he's saying to the Court in essence that the actions of AWD-DPC were really the actions of FATCO and Gust Rosenfeld. And he says specifically in this slide 24, he's alleging that the lawyers and the company were artificially delaying and expanding the litigation pursuing claims and defenses without justification, harassing and purposely damaging the Walkers. This is different than anything Mr.

Keating has said in this entire history of the lawsuit over the seven years. This has been our position from the beginning. And our situation here, Judge, now we find ourselves in Bankruptcy Court is that Mr. Keating is now saying everything that he claims we did wrong really was done by FATCO, really was done by their lawyers, not by Mr. Lipin. And his judgment that he's claiming against us, he's saying that same amount of money ought to be paid by FATCO and by the lawyers.

Next.

Mr. Keating also indicates that not only was the litigation controlled by FATCO and the lawyers, but the outrageous actions that were ultimately formally attributed to AWD-DPC by Judge Olsen were really the acts of the Defendants he's now suing. He says also that the fact remains that the progenitors of the damaging, fraudulent, harassing, faithless, and disloyal actions were FATCO and Gust, not Lipin.

And finally, in his conclusion, this is very telling, those litigation practices carried out by FATCO and Gust improperly damaged the Walkers in an amount with interest of over $1.4 million. Well, here he's admitting that this is what he is entitled to, which is what he has in terms of a judgment against Lipin when the very conduct that gives rise to the Lipin judgment is now recognized to be the fault of FATCO and Gust Rosenfeld. He's speaking out of both sides of his mouth, he's made a judicial admission, and he comes to Court with

unclean hands when he's filing this complaint.

THE COURT: Now, these statements in the pleading by counsel were, of course, focused on the parties then involved, the targets then involved, FATCO and the Gust law firm, and what these statements don't say is that this has -- that Lipin had nothing to do with damaging the Walkers. Is that not correct?

MR. STROHM: That's correct, Your Honor, but I would respectfully point out that if we follow the one recovery rule, if Mr. Keating is now saying that the recovery of $1.4 million is the legal responsibility of FATCO and the lawyers, he can't also say and it's also the legal responsibility of Lipin. It's one or the other, and at best, we're entitled to a setoff is there is any recovery out of this case against that, because it's the same theory, except it adds one other point, which is that Lipin didn't do anything wrong, he doesn't say that, but the lawyers who directed litigation, who did things that the Judge hated, and took it out on Lipin were actually the ones who were responsible for it. And that's just not fair.

Next, please.

Judicial estoppel bars Walkers' claim number 13 in its entirety, Your Honor. And I've looked up the leading case on judicial estoppel, which is the Standedge Ventures case, shepherdized (sic) it. It's still good law, and basically requires three elements: the parties must be the same, and here

they are, Walkers and Lipin; same fact question, who owes the damages; and the party asserting the inconsistent position, which is the Walkers, must have been successful in a prior judicial proceeding, and they are, they've got a judgment against Lipin. So with all of those factors being in place, those judicial admissions are usable against this creditor who comes to Court with unclean hands, and is asking Your Honor to say that Lipin is responsible for all this when he admits Lipin isn't, or he admits other people are. He's got one chance of recovery, and that one chance of recovery, that one bucket of money, we're entitled to contribution from if it turns out that he receives anything from it.

Next.

You asked earlier, Your Honor, about whether there had been any requests, and I know the Court is sensitive about discovery requests coming out, and the reason why we did not do discovery requests in this area is because we know they would be futile. I had another slide earlier that indicated that Mr. Loucks took the position that he wasn't going to disclose. This is the same slide with respect to Walkers. Walkers were not going to disclose.

THE COURT: Well, your client was not obligated to accept that decision from the opponent, however. Your client was -- had the right to force the issue by formally propounding discovery requests. Did he not?

MR. STROHM: Yes. But the reason why that didn't happen was because two things; one is they felt it was futile. I know they had the legal responsibility to go ahead and force the issue, but secondly, keep this in mind; these offsets, or alleged offsets, or secret settlements, were discovered after the original motion for summary judgment was filed. These were filed as supplementals. We didn't have the time to go out and visit a stat room and get all the material back to present to the Court or to litigate whether there's a motion to compel that they should be required to follow. We just didn't have the time to do that, so that we put it in and when we did the research for the Rule 56, we found the -- what we think is the controlling view, which is that if it arises out of the same litigation, all of the easement litigation, then the offsets can be considered by the Court. Whether those offsets can be monetized at the time you make the motion no law says. Our intent was to bring it to the Court's attention, get a summary judgment ruling indicating that offsets are present, and then do the discovery necessary to bring back to the Court to show that either they've been made whole or their judgments had been reduced.

Next.

In Walkers case, they admit that they received benefits as well. And remember the easement relinquished extinguishment is huge, and here's why. Remember that Parsons

claimed that his damage was $47,000 per year because of Walkers' failure to disclose to Lipin, the buyer of the property, of the cattle operation, and therefore his cattle operation was affected. And he's losing 47,000 bucks a year. That happened for a period of almost ten years, or at least eight years. And so when they made this deal, that is when Walkers and Parsons made this deal in 2008, what they did was they basically extinguished that cattle operation limitation or easement which allows Walker now to go out and sell to third parties. So Walkers benefit is that he not only got the land back from us in a foreclosure, and he also has a deficiency judgment sitting out there, but he also made a deal with Parsons where Parsons now releases him and he can sell that land not subject to the easement at all.

Secondly, there was a forgiveness of the note of $30,000 that was still money that was owed by Parsons to Walkers for grazing rights on the 20 acres that was isolated amidst the 1,100 acres that my client bought, along with other grazing rights on the 1,100. That was being paid for at a rate of $1,500 per month. There was 19 payments left to go on it. That was also extinguished to the credit -- I think to us as a credit of $30,000, and most importantly, this hundred acres of land was given, and again that's between 500,000 and $1.5 million in value. That was part of the settlement. That's what the price was to get rid of this.

Go ahead.

The -- when we asked for disclosure, Mr. Keating indicated that we don't have to tell you and we're not going to tell you, besides all settlements more or less are created equal, meaning that we got value back for whatever we gave. So if that's true, and he gave away land that was worth 500,000 to 1.5 million, presumably he got something back that was worth that, which would probably be the easement relinquishment extinguishment, would stop the bleeding of the $47,000 per year, and stops the running of this covenant to allow a cattle operation infinitum. It would go on forever unless there was this deal. Walkers were handicapped, they could not sell the land unless they made the deal, and we should get a credit for that.

Next.

Finally, with respect to the only objection that Mr. Keating has alleged in this case to disclosure is this Rule 408. He cites no authority whatsoever in his moving papers, nothing. The only thing he cites is Rule 408, rule of evidence. Rule 408 is designed to do one specific thing, to make privileged any conversations or negotiations that relate to prospective settlement. It doesn't prophylactically bar any discussion of settlement after the settlement has occurred. And what I'm trying to get across to the Court that Mr. Keating missed is that we're not interested in using this information

to establish liability. That's what 408 is designed to do. You can't take someone's willingness to compromise a claim and use that against him to say, well, you're willing to compromise, that must mean that you're liable. That's not the context in which we're using it. We're saying that there are settlements out there that are legitimate offsets that are the meat of this Bankruptcy Court's job to figure out and help us figure out until the Debtor's estate is clear. And because of this rule, he's alleging he doesn't have to disclose, and we believe that that's -- if that's the only defense that he has to it, it must fail.

Next. Next.

Now, one last point, Your Honor, and then I'm -- wrap up here. A couple of things that the Walkers have not failed to give us setoffs for that are very important, and nobody's really talked about them throughout this case, and that is that you have the warehouse that my client put up, approximately 10,000 square feet. It's called a galvalume. It's a steel hybrid and it's very expensive type of metal that was used to build this warehouse for their needs. There's also a nursery, there's a number of ponds, there are septic tanks, there are roads, there's over ten miles of barbed- and chain-link fencing that's still there, and they won't give us access to the property, nor will they give us a credit. Nowhere in Mr. Keating's claim does he give us any credit for any of this

land. All of these assets affixed to the land were just simply ignored. We're entitled to credits for those.

Walkers foreclosed the collateral but have refused access, and they've also refused to give us any credit on the deficiency. That's improper.

Water wells exist. We also have shown in our moving papers that there are water wells that exist. We also have discovered for Mr. Walkers' convenient -- convenience after he received the property back in foreclosure, at our expense we drilled, discovered, and we have certified water that's potentially worth $43 million. And it's the only water in the east side of the Picacho Mountains. This area is ripe for development. We have the County planning indicating that this is an area that's going to be developed. This is the only water sitting under his 1,100 acres that they now have.

Next.

Well, to sum up as to why I believe we're entitled to summary judgment on the issue of offsets is that Lipin had nothing to do with the deal between the Walkers and the Parsons. That's uncontested. That's an uncontested fact. That deal was struck so those fellows would have a continued operation. The deal was supposed to be that Walkers was going to disclose for a new buyer. He failed to disclose, and that's what gave rise to the litigation. All of it came about by virtue of Walkers' wrongdoing.

Second, Lipin had nothing to do with Rothschild's bad drafting. In other words, it wasn't anything that he did or contributed to the ambiguous easement or the cattle contract between these two entities. That's uncontested as well. He's also innocent of the title company's failure to insure clear title.

Next.

And he's also innocent of First American Title's failure to disclose the Clowdon (sic) title, and we haven't gotten credit for any of those things, claim 13 must be disallowed.

Go ahead.

So with respect to Walkers, our position is that the Court should find the Walkers' judicial admission that FATCO and GR owe the debt, not Lipin. Secondly, find that Walkers have been made whole, extinguishment of the easement problem is settled, find that if the Court is not inclined to grant that they've been made whole, to order disclosure of the 2008 settlement and allow us to monetize the value of the settlement and present it as an offset.

In addition to the offsets, we want credit for our water discovery, improvements affixed to the land, and would also like the Court to find that 408 does not apply as a matter of law. Now, if that's too onerous for Mr. Walker -- or, excuse me, Mr. Keating -- or if that's too onerous for Mr.

Loucks, then they have a choice. They can disclose the settlements to see if there has been actual credit that we've been missed and not given, or they can withdraw their claims. But they can't come to Court and claim that they haven't been paid when they have, and they have.

Thank you, Judge.

THE COURT: Okay. Thank you.

Let's turn to the Respondents to see if there's anything counsel wish to add to their papers, gentlemen?

MR. LOUCKS: Any preference on who goes first, Judge?

THE COURT: Not -- it's generally who stands up first.

(Laughter)

THE COURT: Mr. Loucks.

MR. LOUCKS: Thank you, Judge.

THE COURT: Perhaps a good way to begin, Mr. Loucks, would be is there an undisputed fact -- is it an undisputed fact that there are in existence setoffs to the Creditors' claim?

MR. LOUCKS: Is it an undisputed fact that there are setoffs?

THE COURT: Yes?

MR. LOUCKS: It's very much disputed, Judge.

THE COURT: Okay.

MR. LOUCKS: But let me answer your earlier question

before I get back to that.

THE COURT: All right.

MR. LOUCKS: Parsons did not move for summary judgment on the $190,800 business damages claim. The Court was absolutely correct.

Parsons believes that there are questions of fact that preclude entry of judgment on that, and the only thing it moved for on its cross-motion for summary judgment was the $265,000 sanction that the state court imposed on Lipan personally.

THE COURT: All right. The -- I'll tell you frankly, my notes indicated that that was part of the cross-motion, but I can take it that there is no $190,800 portion of the judgment on which this Creditor is seeking a cross-motion for summary judgment?

MR. LOUCKS: Correct, Judge.

THE COURT: Noted.

MR. LOUCKS: Now I was relieved to hear when Mr. Strohm stood up that some of the factual issues have been clarified. For example, in the moving papers the Debtor states -- I can't quote it because I don't have it in front of me, but he states, "Lipin was not a party to the state court action," period.

So I was relieved when Mr. Strohm stood up and presented the answer and showed that he indeed was a party to

the state court action.

The issue is not whether he was a party to any claim brought by Parsons. The issue is whether the state court had jurisdiction over him personally, and by appearing as a party, obviously the state court did have jurisdiction over him personally.

And the reason I say -- I phrase it that way, Judge, is because if you look at Parsons' judgment, it's two components, and I've just touched on them. There's one component of $190,000 and change for lost business and business damages, and that was assessed only against Mr. Lipin's LLC, wholly owned, wholly directed LLC.

The other portion was a sanction, and this is the other thing that I was glad that Mr. Strohm stood up and addressed, because in his moving papers he states time and time again Lipin was never sanctioned. So it was a relief to me when he just stood up and he said, and I'll quote him, "That the state court hated his arguments and took it out on Lipin."

And that is exactly correct. The state court hated his arguments for six years, found that he had not proceeded in good faith, found that he had primarily proceeded for the purposes of delay, harassment, and increasing Parsons' attorneys' fees.

It did not award Parsons attorneys' fees. What it did is it said, "I will sanction Mr. Lipin, and the basis of

the sanction will be the attorneys' fees he incurred." There is no separate award of attorneys' fees in Parsons' favor.

Now to get deeper than that, Judge, requires on any level some sort of analysis that is prohibited by the Rooker-Feldman doctrine.

And when we talk about what the easement was, when we talk about what the claims were in the state court, every attempt to go there is an attempt from the Debtor to pierce the Rooker-Feldman doctrine. And this Court has already said it wouldn't do that.

But for example, one of the slides that Mr. Strohm just put up, and forgive me for going out of order, Judge, on page 15, pages 14 and 15 of his slides, Mr. Strohm was talking about alleged malpractice by -- excuse me. Was talking about Parsons releasing its claim for about $47,000 against the Walkers.

Going back to the state court pleadings, and Lipin has already put this at issue in the moving papers. He admitted that in 2005 the state court found that the contract he was talking about was not enforceable, so there was no claim. That was not the claim, $47,000 for the loss of the property as a whole, because the Court found it wasn't enforceable. So, that in turn cannot be the basis of a settlement. Excuse me; of an offset.

Debtor has also pleaded in his papers or in his

moving papers that MCR had been negligent back in 1998, had committed a malpractice back in 1998 by failing to obtain title insurance for Parsons in that transaction.

And now he stands up before you and says, that may have been in the past, but in fact it was Mr. Rothschild who drafted an easement that was ambiguous. That was never an issue in the state court case, Judge, and that type of allegation really requires a type of factual intensive inquiry that this Court is not well suited for. It requires going back and piercing the state court judgment to figure out what was going on in the state court. And I asked the Court not to do that.

Now one of the reasons of course for doing that is that the state court judgment, if you read it, it says there was a recorded judgment that Lipin was aware -- excuse me. There was a recorded easement, that Lipin was aware of the recorded easement, and the Court interprets the recorded easement.

So, if there was an ambiguity, it had nothing to do with his actions. In fact, this goes to the one recovery rule. Parsons agrees that there is a one recovery rule, but that's a misnomer. The one recovery rule says you can't recover the same damages from multiple parties. You can't have a windfall.

What is happening here though is Lipin admits and the state court found that he blocked access against a recorded

easement.

Now the malpractice, for example, MCR, if it committed malpractice, did not participate in blocking access over that easement, did not participate in the six years of conduct in the state court that has been found and cannot be challenged to have been harassing. It did not create any of that conduct. And the same thing could be said of Fidelity, and the same thing could be said of the Walkers. Only Lipin chose to block access to the easement, and only Lipin chose to harass Parsons in the state court, and because of that there's a sanction.

There is not a single case cited to the court where there has been an offset against a sanction. Not a single one.

In fact not a single court case cited to the Court where there has been an offset allowed post-judgment, and that's what Debtor is seeking here. There's no basis for an offset. There's no facts for an offset, and they're not entitled to it on any ground.

Now I should have asked earlier, Judge, if the Court had any questions raised from the prior presentation, but I'll skip to that now. Did the Court have any questions?

THE COURT: I do not.

MR. LOUCKS: Then let me just end on one thought, Judge, and it occurred to me as I was preparing for this argument that the Lipin is taking a double standard. On the

one hand he argues, and the Court has already rejected this argument, that he should not be responsible in any event for the damages caused by his wholly owned LLC.

Now understanding that that's a factual issue for Parsons' claim and is reserved to the future, it's disingenuous of him to stand up and say, "Wait a minute. Parsons can't get the benefit of that but I can," but Lipin can.

And he says that because if Parsons only had claims in the state court against AWD LLC, and it was ultimately a sanction that hooked him personally in favor of Parsons, that means that the attorneys' fees incurred in the state court were incurred against AWD Farms LLC --excuse me, AWD Ranch, I apologize for that -- which means that he's arguing for an offset on issues incurred by a third party.

Now he did stand up here a minute ago and say, "I'm entitled to $2 of offset for every dollar of offset on a deal, some alleged deal, between Parsons and Walkers, which by the way he admits -- he admits in his motion papers that there was no 100 acre conveyance, but he stands up here and asks you for a 100 acre conveyance so I'm confused about that.

But he says if there was a payment from the Walkers to the Parsons on the dollar, I get credit for that, and if there was a payment of a dollar from Parsons to the Walker in the same settlement agreement I also get a dollar credit for that. And there's never been a case that allowed him, a third

party, to take two dollars credit for every one dollar at issue between other settling parties.

So I think the Court, at least as indicated in its preliminary ruling, balances a lot of interests here, and one of those is walking the line of what Lipin has moved for in his papers versus what actually happened in the state court, versus what Mr. Strohm got up and said today which was clearly was not representative, or not reflected, excuse me, in the state court papers.

If the Court doesn't have any other questions for me, I'll let Mr. Keating stand up.

THE COURT: I have none, thank you.

MR. LOUCKS: Thank you.

Mr. Keating, anything to add to your client's papers?

MR. KEATING: Yes. Thank you, Your Honor. Kevin Keating for the Walker creditors.

I'll try to be brief so that we don't repeat anything here, but -- and I'm going to discuss some of the issues that Mr. Strohm raised probably in the order that he raised them because that's the way all my notes are going to be reading here.

The -- he loves to talk about subject matter jurisdiction and how he can keep raising subject matter jurisdiction in 2013 -- but there was no issue of subject matter jurisdiction in the court below, in the -- I mean, there

was, you know, statute of limitations defenses or not that they waived. There were other things that they could have raised below, and there -- but there was never any question that the court didn't have proper jurisdiction, subject matter jurisdiction, to do what it did. And that's just a contrivance that he's come up with lately to try to fit other things into a -- the category of subject matter jurisdiction when they don't really fit.

Now -- and our main point of course is that the offsets that he's talking about do not relate to the Walkers' judgment that's the basis for the claim in this bankruptcy matter. The basis for the judgment is Lipin's fraud, and the basis for the Walkers' claims in the tort below were Lipin's fraud and, you know, its attempt to foreclose on the property and get the property back because they failed to pay on the promissory notes.

The fact that the Walkers and Parsons may have worked out some sort of settlement, you know, way down the road in 2008 is, you know, totally irrelevant to the judgment that was obtained in the superior court below by the Walkers. It doesn't help him make an argument about his fraud being less of a fraud. It doesn't help him go back and make payments on his -- on his note so he can avoid foreclosure.

And of course we have to make sure we keep in mind the fact that foreclosure did take place and the property was

foreclosed and it was ultimately recovered by the Walkers, so he doesn't own it anymore, and none of his companies own it anymore, and they haven't owned it for a long time. And that's important to a lot of, you know, issues that he keeps raising as if he was still on the property.

And of course he's -- it's very wrong of him to unify all the issues, I mean issues and claims in the Pinal County case as if it was just one little thing. There were a lot of different claims as I just said, the foreclosure claim, the fraud claim. He had fraud claims that he lost against the Walkers. He had other cross-claims against the Walkers that he lost, and, you know, none of those as far as the Walkers are concerned related to the 1998 sale by the Walkers of certain property to the Parsons.

This transaction in this case in the, you know, in the Pinal County case, took place in 2002 when Lipin and his colleagues there bought 1,100 acres from the Walkers.

And there was an easement on it, a cattle easement on it at the time, and he knew about it. That's what Judge Olsen decided. He knew about it then. There wasn't any adjustment to that easement. The easement, the cattle easement was determined to be a cattle easement and that he should have -- and he did know it and should have known the details of it and should have acted accordingly back when he bought the property, not that it's something that was struck, you know, thrust upon

him as a change in anybody's status in 2008 when that -- when Judge Olsen decided that the easement was indeed a cattle easement and that had always been a cattle easement. And there was no, you know, no change or discrepancy in that.

And he can't, you know, Lipin can't change -- claim any benefit from the fact that Judge Olsen made a ruling on that cattle easement that it was always a cattle easement and, you know, if he acted wrongly at the time that he bought the property in relation to that cattle easement, that's, you know, I mean that was his problem. He lost that already.

And now it -- again I'll -- sorry if I'm skipping around too much here, but, you know, he talks about his request for documents about the 2008 Walker Parsons settlement. Again, as the Court has noted, there was never any formal discovery, and there wasn't really any informal request for discovery either.

The only, you know, the only thing in there is by implication in the summary judgment papers that we would have objected, and that's true, you know, but if he's trying to claim that there was even informal discovery, that's, you know, that's false.

And there's certainly no admission anywhere in any of the documents that any of the transactions or issues or byplay here accounted -- amounted to an offset.

We don't believe there was an offset. Nothing could

be categorized at an offset, and so it's not a matter of accepting or not accepting it. There was just no offsets. And that's always been our position, and I think it's pretty clear from our papers that there was never any offset.

Now he talks about the value of the property now. You know, it's preposterous to think that he would have wasted so much time and energy thinking that this property might be worth $5,000 an acre, or $15,000 an acre. I mean, if somebody came along with an offer to buy that property at any of those prices, you know, I'd make the trip to wherever that potential buyer is and treat him to lunch, and we'd really talk seriously about selling the property to whoever wants it.

There has never been any value placed on that property. There's never been any -- anybody interested in buying it. We -- it was advertised for sale as part of the foreclosure process. Nobody bid. Nobody came in and said, "Hey, I'll give you three cents an acre." Nobody said that.

And he didn't even come back and, you know, redeem it. He had six months to redeem it. If it was worth all that much money, why didn't he try to redeem it, you know, at that time, you know, several years ago?

The offer, particularly at that stage of the recession, the offer would have been met with a lot more, you know, negotiation on the Walkers' part than it would be now.

But if it's worth -- if it's worth $500 an acre, you

know, that'd be a lot.

And of course as part of this settlement he's only talking about there being in there a value, an amount of 100 acres, you know. I mean, if -- nobody's going to buy 100 acres in that part of the country -- you know, with no access. I mean, the Walkers don't technically have any legal access to it either. And it's not at all comparable to the Mesa property that they, or, you know, own in Pinal County that they want to sell in order to pay for the Cubs' ballpark. You know, that property does have value, and it's, you know, it's not landlocked like ours. It's not really near where ours is.

And of course his -- also his water discussions are also fanciful. There's water -- there's a lot of water on a lot of property nearby, and that -- the fact that there's water underground in Pinal County doesn't help us in trying to sell the property that we have.

And also their claimed offset about where they came up with a fanciful figure of 2.7 million being what's on the property, what they put on the property? You know, they abandoned the property when they, you know, when they, you know, lost the foreclosure action. What was fixed to the land or what they left there is, you know, it's not their, it's not the Walkers' problem.

It -- I mean, it's the Walkers' problem in a negative way, but it's not something that the Walkers look at with any

fondness and figure out, "Oh, gee, this adds value to it," because it doesn't.

They've despoiled the property. It's worth less because of it. One of their group owns the 30 acre parcel right next to it and that's, you know, they've claimed that they have a separate kind of an easement of access across our property, so that also, you know, diminishes the value of our property. If we tried to sell it we'd have to deal with that issue.

The -- and of course most of the things in his paper were things he's just raised today so I -- we probably, you know, don't even need to spend too much time talking about the value of these offsets, or the water issue or the other things because he didn't really include them in any of his papers here. He included it in some other papers somewhere, but again that's a fanciful idea that has no, you know, no relationship to reality.

In the FATCO lawsuit, the lawsuit that Walkers have brought against FATCO and Gust in Pinal County Superior Court, that case is just in the pleadings stage. FATCO hasn't answered the complaint yet. They filed a motion to dismiss and that's pending.

The -- and so I don't know when that is likely to have any kind of judgment that might determine how many -- how much damages FATCO or Gust should have to pay to the Walkers,

but they haven't paid anything, and who knows what's going to happen in that case.

I've made the argument in the -- in our papers that if anything, it would be FATCO that might have an argument that if Lipin pays the full amount that he owes to the Walkers and then they're out of the, you know, out of the picture, they don't have to worry because we've been made whole.

And I agree that we wouldn't, you know -- the Walkers shouldn't get paid by both of them, but I want to make it clear that in our papers we didn't say that Lipin is blameless. Far from it. We talk about how we think and we allege that FATCO and Gust, you know, were acting wrongly, and the damages that the Walkers suffered are due to their actions as well.

But we didn't, you know -- we're not saying that Lipin didn't have anything to do with it, and of course the Court will have to determine that one way or the other anyway. That's not -- it's not something that this Court is going to make a judgment on based on my allegations in a case that's just begun.

The -- the -- in the settlement between the Walkers and the Parsons in 19 -- in 2008, I mean, there has been no exchange -- I mean, you know, I'm fearful of saying too much here because I, you know, don't want to disclose the details of the settlement, but nonetheless there was a settlement, I understand. You know, I agree that there was a such

settlement.

But it wasn't anything that amounted to a grand benefit to either side, and of course it's also wrong for Lipin to say in any of his papers that the lawsuit below -- he didn't say that today in his oral argument but in his papers, in his motion, he talked about how the lawsuit in Pinal County was begun by Parsons against the Walkers, as if the Walkers were the major opponent or Defendant.

And they were just a, you know -- they were a technical defendant because they had title to this property that was involved in their claims against -- to get this easement, this cattle easement declared to be a cattle easement.

And, you know, in fact they, you know -- everybody soon realized that Walkers and Parsons didn't have any beefs against each other and so they didn't litigate against each other during the course of that lawsuit after the, you know, after the first short period of time.

And then when they settled it as a formal matter to get rid of it, they got rid of it without any, you know, without any -- it being any big deal.

And that was after the Court had decided that it was -- that the easement was a cattle easement. It was after the Court had decided that it was going to order a foreclosure, so it was clear right then that, you know, Lipin and Company were

not going to own that property anymore once the judgment was actually prepared and filed and once the foreclosure sale was actually, you know, actually took place.

And the -- you know, for them to, you know, concoct all these arguments that they've been making the last, you know, couple of months in this thing is -- is, I think it's just silliness, and it's just them, you know, scraping around for excuses and issues that they keep concocting but which most of them they didn't, you know, didn't even think to bring back in the court below.

And of course if they had brought them in the court below, they would have lost them just like they lost every other argument that they made down in the court below, and I -- and then they ought to, you know. There's no reason why this Court should go and re, you know, re-do stuff that the superior court in Pinal County did. That's all -- everything they want to achieve in these actions is to try to, you know, re-do stuff in the Pinal County case.

THE COURT: Okay. Thank you.

Mr. Strohm, you're itching to tell me something. A brief reply if you will.

MR. STROHM: Very brief, Judge.

And first of all I think that Mr. Keating is reinventing history here. The litigation was begun by -- had nothing to do with Lipin. Litigation was begun in Pinal County

precisely because of this easement issue and the failure to disclose the easement by the Walkers.

And it lasted five years. It wasn't as if, as he just said, there was no beef between Parsons and Walkers. There was five years' worth of beef and probably close to a million bucks in legal fees that were paid.

That early ruling, contrary to what Mr. Keating has just told the Court, was in favor of the LLCs who purchased the property, and there found that there was exactly no reason why they should be -- they should not have claims against these folks because the contract damages were there.

The 2005 contract was found to be enforceable as to the Walkers but unenforceable as to Lipin. And that's important. That's what Judge O'Neil decided.

Unfortunately what happened was the lawyer who had the case at that time didn't record the judgment. O'Neil's first judgment was in favor of the purchasers.

Secondly with respect to Mr. Loucks' claim that, you know, we're basically in a situation where we have a damages that ought not to be credited to us.

I think Mr. Keating correctly conceded that were only all of the Creditors entitled to one recovery. If there's any offset that is -- exists, we're entitled to get credit for it.

Mr. Parsons, the problem with Parsons is that the damages were still running against them. The damages would

continue to run. Parsons' damages would continue to run for as long as there was no settlement. That settlement erased the pleading. They no longer had to pay those lost damages. And that's important.

Secondly, the offsets, when we're dealing with this whole concept of offsets, we're not in Rooker-Feldman. We're no longer in Rooker-Feldman where we're looking to pierce a judgment or to go behind the judgment and find out what's realistic.

All we're trying to do is to say, "Okay, we've got a judgment. It's worth X." These other parties involving the same litigation have been paid so much, whether in kind or whether in cash, and to the extent that there is a setoff, we're entitled to it.

They won't disclose what the setoffs are. They concede there were settlements after five years and this whole litigation went away that was begun with Walkers' wrongdoing.

If Walker can now stand up in court and say, "We don't have to disclose," you're basically requiring Lipin to pay for Walkers' wrongdoing by enforcing this judgment.

With respect to Mr. Walker's other claims, I appreciate very much that he says that we're entitled to get credit for a double recovery. And he agrees, Mr. Keating apparently agrees that Walkers, you know, should not be paid double by both FATCO and Lipin.

Well, great. That's a start. That's a start. That's a concession that hasn't been made until today. We appreciate that.

Finally I'd like to say that with respect to the motion to dismiss in Pinal County, the motion to dismiss in Pinal County from which I cited quotes on the response that was filed by Mr. Keating, that case is a little further along. I don't know if even Mr. Keating is aware of it, but the Court has already ruled in that case and has denied the motion to dismiss that was brought by FATCO and joined by Gust Rosenfeld, so as it stands the Court has accepted those allegations that I've put up on the screen with respect to FATCO and GR.

And it's -- he's gotten past the motion for dismissal on that, Your Honor.

Well, for all those reasons I'd -- for my lengthy presentation this morning I apologize, but for all those reasons I would appreciate it if the Court would reconsider and look to these offsets as the proper and equitable thing to allocate in favor of Mr. Lipin.

Thank you.

THE COURT: Okay. Thank you.

MR. KEATING: Can I add quickly?

I didn't know about that decision that he just announced, and I'm happy to hear that, but.

THE COURT: Okay. We'll note that as well, Mr.

Keating.

MR. KEATING: He's keeping closer track of the case than I am, I guess.

(Laughter)

THE COURT: All right.

Gentlemen, I'm prepared to rule on this matter now, and I'll do so. Accordingly, anyone who wishes a complete copy of my ruling and my reasons therefor may obtain it by ordering either a transcript of this hearing or a compact disk recording.

I'll start with the obvious principles since we're dealing with two motions for summary judgment, which I believe can be discussed together, as along with one cross-motion for summary judgment.

Summary judgment, we all know, is appropriate only when there is no genuine issue of material fact and the moving party's entitled to judgment as a matter of law. In ruling, the non-moving party's evidence is believed. All justifiable inferences are drawn in that party's favor.

Movant bears the initial responsibility of informing the Court of the basis for its motion, and identifying those pleadings, depositions, answers, interrogatories, admissions, together with affidavits which demonstrate the absence of a genuine issue of material fact. See the Supreme Court's important Celotex Corporation decision, 106 Sup.Ct. 2548 at

2553. And pursuant to Celotex, once the moving party has met its burden, the opposing party then has the burden to come forward with a more convincing showing that summary judgment is not appropriate. See the Bankruptcy Appellate Panel's Coleman Oil Company decision, 190 B.R. 370 at 373. This BAP opinion was affirmed by the Ninth Circuit, 127 F.3d, 904.

The burden on the non-moving party is more than to simply show metaphysical doubt. Although inferences drawn from underlying facts must be viewed most favorable to the party opposing the motion, a non-movant must show the inference favoring it is reasonable in light of competing inferences.

If the factual context renders a party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary.

This comes to us from the Supreme Court's Zenith Radio Corporation case, 106 S.Ct. 1348 at 1356 to 57, or as our Court of Appeals has phrased it, "A conclusory self-serving affidavit lacking detailed facts and any supporting evidence is insufficient to create a genuine issue of material fact." I'm reading from the Ninth Circuit's Caneva decision, 550 F.3d, 755 at 763.

And the burden of course is to apply these principles to the present matters. In the present case the Debtor here believes that secret settlements have or may result in a double recovery by these Creditors, and he further argues in papers at

least that the failure of these Creditors to report these other sources of recovery means a false bankruptcy claim was filed, or in the alternative that he's entitled to some type of an offset.

This startling allegation of a false claim of course is premised on the federal criminal statute, 18 U.S.C. § 152, paragraph 4, which provides that a person who knowingly and fraudulently presents any false claim against the estate of a debtor under Title 11 shall be find or imprisoned or both. But although this is certainly a statute that attracts our attention, the fact is that there is no private cause of action arising from this criminal statute. See the Heavrin decision, 246 F.Supp.2d 728 at 731. See also bankruptcy case In Re Anthony, 481 B.R. 602 at 627.

However, while there is no private cause of action that can be premised on the criminal statute, there could still be a basis for a civil sanction. See a discussion by the bankruptcy court in the Verona decision, 388 B.R. 705 at 711, and also presumably there is a basis under Federal Bankruptcy Rule 9011, but I think we're pursuing a false alternative when we make these allegations based on a criminal statute.

A setoff created by a settlement, well, might be, but the problem here is that there is little showing by the Debtor as a matter of law that there is any knowing, and for that matter fraudulent filing of a bankruptcy claim which could be

subject to a settlement setoff.

Just focusing on the setoff aspects of the Debtor's motion, what's missing here largely is any real analysis of Arizona law as to how to compute these setoffs other than a reference to a single Arizona case affirming a right of setoff of compensatory damages through a settlement, and that's the Arizona Court of Appeals Regency Phoenix Hotel case, 907 B.R.2d, 506.

In that case this is what our State Court of Appeals had to say in part: "In Arizona a joint tort feasor is entitled to have the amount of another joint tort feasor's settlement applied in reduction of the Plaintiff's claim." See 909 P.2d at 524.

But how does that help us here? Are bankruptcy creditors joint tort feasors? I doubt it. Does the statue that's implicated in this decision, A.R.S. 12-2504, even apply? I can't see how it does. It provides in part:

> "If a release or covenant not to sue is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death, it does not discharge the other tort feasors from liability for the injury or wrongful death, but it reduces the claim against the others to the extent of any amount stipulated by the release, and it discharges the

tort feasor to whom it is given from all liability for contribution to any other tort feasor."

I just don't see with respect how the citation of these authorities helps -- has clearly established that this statute applies to reduce judgments that were obtained in the state court against the Debtor in favor of these Creditors, and I can't see how concepts of joint tort feasors and wrongful death causation are helpful as well.

Is there such a thing as a setoff to a bankruptcy claim? Of course there is, but the setoff has to be established. If, and additionally, if the Debtor was aware of earlier settlements, then he may well be too late to be asserting them as setoffs to bankruptcy claims.

The, again, the State Court of Appeals has noted:

"Public policy demands there be an end to litigation. The common good requires that there be an end to strife for the purpose of producing certainty, and thus a defendant requesting the court to apply the amount of another joint tort feasor's payment to reduce a plaintiff's claim should do so before the judgment is entered."

Again, that's from Regency Phoenix at pages 524 to 25, so that even if this case applied as the Debtor apparently thought it did, there's a caution here that such matters have to be raised

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before the judgment is rendered.

I really am required to deny the Debtor's motions for summary judgment against these two Creditors because we have had a great deal of speculation and then suspicion but no establishment as a matter of material undisputed fact, or for that matter as a matter of law, that these Creditors filed a false claim, or even that the Debtor has some setoff rights as a result of any settlement.

The one Creditor, The Parsons Company, filed a cross-motion for summary judgment asserting it's entitled to summary judgment on the issue of the validity of the state court judgment against the Debtor, and here's what I've already done on these issues by a previous ruling that I entered, and my ruling provided in part the Debtor's collateral attack on The Parsons' judgment falls short for three reasons.

First, Movant filed a state court Rule 60(c)(4) motion claiming the judgments were void and making essentially the same arguments made here, and the motion was denied. The Debtor appealed, but the Debtor subsequently dismissed his appeal.

Second, the Movant raised similar arguments in district court and lost before Chief District Judge Silver in District case 11-1599. In dismissing the Plaintiff's first amended complaint, the chief judge focused at least in part on the Rooker-Feldman doctrine that was, that's an important focus

because the fact of the matter is Rooker-Feldman bars -- implicates bankruptcy judges as well as district and circuit judges.

This is what the chief district judge said in that case: "Federal district courts lack jurisdiction to review state court orders of judgment. This Court," the district court continued, "lacks jurisdiction to review the Pinal County Superior Court's judgments and orders."

And a third basis for not revising, I ruled, the Debtor's collateral attack on The Parsons' judgment, and for that matter on the Walker judgment as well, is the Movant's pre-trial conduct. At least in The Parsons case the Defendant objected to considerations of certain issues at trial.

The Defendants had notice. They actually provided notice they didn't intend to appear at the state court trial. They were as good as their word. The state court determined not to continue the trial, and since the Defendants didn't appear, a unilateral joint pre-trial statement was filed and the trial was conducted with the Defendants not in attendance, and that's resulted in a judgment being entered against the Defendants including Mr. Lipin.

I continued in my earlier ruling:

"It seems this collateral attack on the judgment comes too late. The Defendants chose not to defend at trial. After losing, they filed a

Civil Rule 60(c)(4) motion. They lost that. They appealed. They dismissed their appeal. The Defendants took a second route to avoid the judgments by going through the district court, and that was also unsuccessful. So the Debtor has had ample opportunity to collaterally and directly attack the judgments."

And I concluded in my ruling:

"This Court will reject the collateral attack and simply look at the judgments and determine if they form a basis for non-dischargeability in bankruptcy. For these reasons the Debtor's claim objections, based on the same arguments, is overruled."

I've been reading from my prior ruling from the transcript at pages 3 to 9.

Or course what we have here today is not a discussion in an adversary proceeding of non-dischargeability but rather the Debtor's attack on these judgments. But these claims objections, originally premised by attacking the judgments themselves, have been entirely resolved, and the only issue that may be remaining is the Debtor's contention that he was not a named party in Pinal County litigation.

He notes that the court found, "AWD Ranch LLC, and Desert Plants Conservancy LLC caused Parsons' damages." And

see the judgment attached to The Parsons proof of claim.

However, the state court found that Mr. Lipin and others were jointly and severally liable in the amount of some $265,475 in fees awarded to The Parsons, and accordingly when the Debtor filed a motion to alter the Court's judgment, noting that he was not personally assessed at least the $190,800 portion of the claim, that that motion is -- was at Docket 235.

This is what The Parsons had to say in response to that claim objection in part:

> "There is no dispute the judgment specified the $190,800 portion of Parsons' claim was a judgment against Lipin's entity ranch and not against him personally. Parsons filed his claim against Lipin upon information and belief that any assets and debts of the company were distributed to Lipin when Ranch ceased its business.
>
> "Evidence in adversary proceeding 11-2300 will show,"

the Creditor continued,

> "...Lipin collaborated with Creditor AWD Farms LLC to pierce Ranch's corporate veil. Parsons only seeks equal treatment of its dischargeable claim. If an investor in the Debtor's business such as AWD Farms LLC not only can elevate its

claim from an equity claim to a general unsecured claim but also pierce the corporate veil to allow for a personal claim against Lipin, then at a minimum Lipin should be charged with administering the estate in an equitable manner to -- as to all claimants."

And frankly I took the papers filed in the cross-motion as a summary judgment on this $190,000 claim component as well.

But, I've been assured by Counsel that this is not the case, and that's a good thing because I would not grant the cross-motion for summary judgment as to the $190,800 portion of the judgment. But the way things stand today, I think the remainder of that claim is well supported by the judgment, and if it's anything we've learned from this extended litigation, it's that I am not going to revisit any judgment so in part I'm going to grant The Parsons' cross-motion for summary judgment, but as to the legitimacy of its claim but not as to the $190,800 portion as well. And I think a similar result occurs as to the estate of Walker as well.

Yes, claims, even claims established by valid judgments, are subject to a setoff. Yes, creditors are not to be paid twice for the exact same claim. We know all these things, but that's really all I know about the facts argued by the Debtor in these summary judgment motions.

If I had to summarize my ruling -- I'm obviously

going to deny both summary judgments of the Debtor -- if I had to summarize my ruling, I would say this. Suspicions and speculations are an insubstantial basis on which to formally object to a bankruptcy claim, or for that matter even to argue that a shifting of the burden of proof with regard to the properly filed proof of claim has been filed. And this is applicable to both of these Creditors' claims.

Now this Debtor had and has the tools, such as Bankruptcy Rule 2004, to investigate any possible setoffs to the proof of claim and -- but that's what should occur first, and those facts should be adduced and the setoff liquidated before we file motions for summary judgment on legal theories.

So I -- the best I can agree with Mr. Lipin is he's exactly correct. Creditors can't have a windfall. They can't be paid twice. But really, that's where I find myself -- that's the, basically the extent of my agreement with Mr. Lipin at least on these two motions, so that's why I'm denying both motions for summary judgment on this matter.

So, the summary judgments are resolved. The objections to claims 12 and 13 are resolved. However, I think a motion has been filed and we've got a hearing pending, do I recall, in March, gentlemen, on the Debtor's motion there?

MR. STROHM: Yes, sir, March 15th.

THE COURT: All right.

Let's have the courtroom deputy remind all of us of

that date and time? We think it's March 15th.

THE CLERK: It is March 15th, but that date will be rescheduled because the Court's not available that day.

THE COURT: Okay. I'm -- apparently I'm -- oh, that's right. I'm fleeing the jurisdiction so the gentlemen are going to hear from me with an amended order that resets that hearing, and my apologies for that.

So that completes these matters on April -- besides this March hearing, which isn't going to happen.

We also have a date on March 2nd at 9:30 for another Chapter 11 status hearing and a status hearing in Adversary 11-2300. And I suggest, gentlemen, we have exhausted each other, so I think we should adjourn.

Good afternoon.

MR. STROHM: Thank you, Your Honor.

MR. KEATING: Thank you, Your Honor.

(Proceedings Concluded)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: February 21, 2013

Harold Ferguson

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